

106TH CONGRESS  
2D SESSION

# S. 2326

To amend the Communications Act of 1934 to strengthen and clarify prohibitions on electronic eavesdropping, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 29, 2000

Mr. WYDEN (for himself and Mr. BURNS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Communications Act of 1934 to strengthen and clarify prohibitions on electronic eavesdropping, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wireless Eaves-  
5 dropping Protection Act of 2000”.

6 **SEC. 2. COMMERCE IN ELECTRONIC EAVESDROPPING DE-**  
7 **VICES.**

8 (a) PROHIBITION ON MODIFICATION.—Section  
9 302(b) of the Communications Act of 1934 (47 U.S.C.

1 302a(b)) is amended by inserting before the period at the  
 2 end thereof the following: “, or modify any such device,  
 3 equipment, or system in any manner that causes such de-  
 4 vice, equipment, or system to fail to comply with such reg-  
 5 ulations”.

6 (b) PROHIBITION ON COMMERCE IN SCANNING RE-  
 7 CEIVERS.—Section 302(d) of such Act (47 U.S.C.  
 8 302a(d)) is amended to read as follows:

9 “(d) EQUIPMENT AUTHORIZATION REGULATIONS.—

10 “(1) PRIVACY PROTECTIONS REQUIRED.—The  
 11 Commission shall prescribe regulations, and review  
 12 and revise such regulations as necessary in response  
 13 to subsequent changes in technology or behavior, de-  
 14 nying equipment authorization (under part 15 of  
 15 title 47, Code of Federal Regulations, or any other  
 16 part of that title) for any scanning receiver that is  
 17 capable of—

18 “(A) receiving transmissions in the fre-  
 19 quencies that are allocated to the domestic cel-  
 20 lular radio telecommunications service or the  
 21 personal communications service;

22 “(B) readily being altered to receive trans-  
 23 missions in such frequencies;

24 “(C) being equipped with decoders that—

1 “(i) convert digital domestic cellular  
2 radio telecommunications service, personal  
3 communications service, or protected spe-  
4 cialized mobile radio service transmissions  
5 to analog voice audio; or

6 “(ii) convert protected paging service  
7 transmissions to alphanumeric text; or

8 “(D) being equipped with devices that oth-  
9 erwise decode encrypted radio transmissions for  
10 the purposes of unauthorized interception.

11 “(2) PRIVACY PROTECTIONS FOR SHARED FRE-  
12 QUENCIES.—The Commission shall, with respect to  
13 scanning receivers capable of receiving transmissions  
14 in frequencies that are used by commercial mobile  
15 services and that are shared by public safety users,  
16 examine methods, and may prescribe such regula-  
17 tions as may be necessary, to enhance the privacy of  
18 users of such frequencies.

19 “(3) TAMPERING PREVENTION.—In prescribing  
20 regulations pursuant to paragraph (1), the Commis-  
21 sion shall consider defining ‘capable of readily being  
22 altered’ to require scanning receivers to be manufac-  
23 tured in a manner that effectively precludes alter-  
24 ation of equipment features and functions as nec-  
25 essary to prevent commerce in devices that may be

1       used unlawfully to intercept or divulge radio commu-  
2       nication.

3           “(4) WARNING LABELS.—In prescribing regula-  
4       tions under paragraph (1), the Commission shall  
5       consider requiring labels on scanning receivers warn-  
6       ing of the prohibitions in Federal law on inten-  
7       tionally intercepting or divulging radio communica-  
8       tions.

9           “(5) DEFINITION.—As used in this subsection,  
10      the term ‘protected’ means secured by an electronic  
11      method that is not published or disclosed except to  
12      authorized users, as further defined by Commission  
13      regulation.”.

14      (c) IMPLEMENTING REGULATIONS.—Not later than  
15      90 days after the date of the enactment of this Act, the  
16      Federal Communications Commission shall prescribe  
17      amendments to its regulations for the purposes of imple-  
18      menting the amendments made by this section.

19      **SEC. 3. UNAUTHORIZED INTERCEPTION OR PUBLICATION**  
20                                   **OF COMMUNICATIONS.**

21      Section 705 of the Communications Act of 1934 (47  
22      U.S.C. 605) is amended—

23           (1) in the heading of such section, by inserting  
24      **“INTERCEPTION OR”** after **“UNAUTHORIZED”**;

(2) in the first sentence of subsection (a), by striking “Except as authorized by chapter 119, title 18, United States Code, no person” and inserting “No person”;

(3) in the second sentence of subsection (a)—

(A) by inserting “intentionally” before “intercept”; and

(B) by striking “communication and divulge” and inserting “communication, and no person having intercepted such a communication shall intentionally divulge”;

(4) in the fourth sentence of subsection (a)—

(A) by inserting “(A)” after “intercepted, shall”; and

(B) by striking “thereof) or” and inserting “thereof); or (B)”;

(5) by striking the last sentence of subsection (a) and inserting the following: “Nothing in this subsection prohibits an interception or disclosure of a communication as authorized by chapter 119 of title 18, United States Code.”; and

(6) in subsection (e)—

(A) in paragraph (1)—

(i) by striking “fined not more than \$2,000 or”; and

1 (ii) by inserting “or fined under title  
2 18, United States Code,” after “6  
3 months,”;

4 (B) in paragraph (3), by striking “any vio-  
5 lation” and inserting “any receipt, interception,  
6 divulgence, publication, or utilization of any  
7 communication in violation”;

8 (C) in paragraph (4), by striking “any  
9 other activity prohibited by subsection (a)” and  
10 inserting “any receipt, interception, divulgence,  
11 publication, or utilization of any communication  
12 in violation of subsection (a)”;

13 (D) by adding at the end the following new  
14 paragraph:

15 “(7) Notwithstanding any other investigative or en-  
16 forcement activities of any other Federal agency, the Com-  
17 mission shall investigate alleged violations of this section  
18 and may proceed to initiate action under section 503 to  
19 impose forfeiture penalties with respect to such violation  
20 upon conclusion of the Commission’s investigation.”.

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